REMARKS

Claims 1-36 and 58-106 are pending in the application, with claims 1, 58 and 71 being independent. Claims 37-57 and 107-132 have been withdrawn as being drawn to a non-elected invention, but with continued traverse. Claims 1, 2 have been amended for grammatical reasons, and claim 6 has been amended to refer to the step of selecting instead of the step for creating in claim 1. Applicants submit that the amendments to claims 1, 2 and 6 are not narrowing amendments. No new matter has been added. Reconsideration of the application is respectfully requested in view of the amendments and following remarks.

Traversal of the Restriction Requirement

Applicants have reviewed the Examiner's reasons for the restriction of the claims as stated on page 2 of the office action and find the reasoning flawed and the Restriction Requirement improper. The Examiner states that claims 58-70 fall into Group I and he inadvertently included them initially in Group II. The Examiner then goes on to state that:

> *there are two distinct inventions claimed, one in which claims the creation of secured streaming container by encrypting the content and transmission to a target device while the other invention has a different inventive concept of accessing the secured streaming container to acquire separate portions of the streaming content while other portions remain secure in the SSC.*

Applicants submit that claims 58-70 (reclassified in the Office Action as Group I) contains ALL of these inventive concepts of both GROUPS I and II and links the two GROUPS I and II. For example, claim 58 recites, in part, "creating a digital container..." and, also, "accessing the secured streaming container..." which the Examiner states are the two inventive concepts distinguishing GROUPS I and II. Applicants submit that examining claims 58-70 necessarily requires (and cannot avoid)

searching all the invention concepts of BOTH GROUPS I and II. For example, claim 70 which depends from claim 58 recites, in part:

> *...playing the streaming media content such that one or more segments of the streaming media content are sequentially played from the digital container while remaining portions of the streaming media content remain secure in the digital container until sequentially played.*

Claim 58 and claim 70, for example, meets all the requirements of the Examiner's restriction for both Groups I and II, as stated on page 2 of the Office Action. Therefore, there cannot be any extra burden for searching as the search for examining claims 58-70 must include the search required for both Groups I and Group II. This appears to be the real reason why claims 58-70 were first classified in Group II then later reclassified as Group I; where in fact, claims 58-70 requires a search that includes searches for both Groups I and II, as stated on page 2 of the office action. Therefore, no matter which Group, I or II, claims 58-70 are included, the search necessary to examine claims 58-70 requires searching BOTH Groups I AND II, as defined by the Examiner. As a result of the Examiner's own definition, there can be no extra burden for searching. Therefore, the reasons provided to explain the restriction are quite improper and Applicants respectfully submit that all claims 1-132 should be examined, and the restriction withdrawn.

Objection to the Specification

The specification was objected to for informalities. In response, the specification has been amended to insert a reference to U.S. Patent 6,751,670, which has now issued. The objection to the specification should now be withdrawn.

Traversal of §102(b) Rejections

Claims 1-17, 25-36, 58-87 and 95-106 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,226,618 to Downs *et al* ("Downs"). This rejection is respectfully traversed.

For anticipation of a claim under 35 U.S.C. § 102, a single prior art reference must contain each and every limitation of the claim, either expressly or under the doctrine of inherency. *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570 (Fed. Circ), *cert. denied*, 488 U.S. 892 (1988). Applicants submit that Downs does not disclose or suggest every limitation of claimed inventions.

Claim 1 (and similarly claims 58 and 71) recite, in part:

> selecting one or more modules for inclusion in the digital container, the selection of the modules being based on at least one of a type of streaming media content and the DRM; (Emphasis added)

However, Downs is directed to a secure digital content electronic distribution system 100 for delivering digital content to user devices (col. 6, lines 37-64).

The distribution system 100 encompasses several business elements including content providers 101, electronic digital content stores 103, intermediate market partners (not shown), clearinghouse 105, content hosting site 111, transmission infrastructures 107 and end user devices 109 (col. 8, lines 55-67). Content providers are owners of content 113 and may license content 113 to electronic digital content stores 103 or intermediate market partners (col. 9, lines 5-9). Electronic digital content stores 103 are entities that market content 113. Once the electronic content store 103 receives a request for electronic content 113 from an end user, the electronic content store is responsible for authorizing the clearinghouse 105 to release a decryption key for content 113 to the end-user or customer and also authorizes the release of a secure container (SC) containing content 113 to the customer (col. 10, lines 19-26). The clearinghouse 105 provides licensing authorization and record keeping related to the sale of use of the content 113 and may validate the authenticity of information in a request for a decryption key for content 113 (col. 10, lines 50-60).

To facilitate the flow of the distribution system 100, multiple types of secure containers (SC) are employed with each type of container having different content and directed to specific entities in the distribution structure at appropriate times as shown in Figs 1A-1D and 6. As shown in Fig 6, there are Metadata SCs 620, Content SCs 630,

Transaction SCs 640, Offer SCs 641, Order SCs 650 and License SCs 660, each type having different content. The different SCs are used to communicate with different entities (e.g., content providers 101, electronic digital content stores 103, clearinghouse 105, content hosting site 111, transmission infrastructures 107 and end user devices 109), as appropriate.

Much of the communication using theses various types of SCs does not involve end users but are used between other entities. For example, metadata SCs 620 are built by content providers 101 for electronic digital stores and includes data to describe content 113 (col. 26, lines 36-36). The content 113 is not included in the metadata SCs 620 because the size of the content 113 is typically too large for the electronic digital stores 103 and for end-users to download. Rather, the metadata SCs contain an URL to point to the content 113 (col. 26, lines 35-43). The content of each of these different types of SCs (e.g., 620, 630, 640, 641, 650) varies with its specific use, as explained at col. 24, line 65 to col. 39, line 24.

The only type of SC that might contain streaming content is the Content SC 113, which might be sent to an end user device. This can be readily ascertained by checking the formats of the various SCs, such as the metadata SC 620 as described beginning at col. 28, line 16 to col. 30, line 62. As shown in the table at this passage, the metadata SC 620 does not contain streaming digital content, but rather URLs to content and metadata along with other items. Similarly, Offer SCs 641 do not contain streaming digital content, as described beginning at col. 30, line 63 to col. 32, line 50. Transaction Secure Containers 640 also do not contain streaming content, as described starting at col. 32, lines 51 to col. 34, line 49. Further, Order SCs 650 do not contain streaming content, as described starting at col. 34 to col. 37, line 24. License SCs do not contain streaming content, as described starting at col. 37, line 25 to col. 38, line 20.

Content SCs 630 might contain digital content as described at col. 38 to col. 39, line 24, possibly with metadata. As can be seen by these descriptions of the various types of SCs, there are significant differences between the system using SCs of Downs and the claimed invention. For example, nowhere does Downs disclose or suggest, in reference to the Content SC 630:

> selecting one or more modules for inclusion in the digital container, the selection of the modules being based on at least one of a type of streaming media content and the DRM (Emphasis added)

Applicants submit that there is no disclosure anywhere in Downs of these limitations. For example, Downs does not disclose selecting one or more modules for inclusion in the digital container (e.g., Content SC) based on the type of streaming media content. Further, Downs does not disclose selecting one or more modules for inclusion in the digital container (e.g., Content SC) based on the DRM. The only items or information, disclosed at col. 38, line 22 to col. 39, line 24, as being included in the Content SC 630 are: SC version, SC ID, SC type (e.g., Offer, Order, Content, etc.), SC publisher date, Content ID, encrypted content (which Downs suggests earlier in the disclosure it might include video, for example at col. 18, lines 5-8), encrypted metadata, and metadata certificates. However, there is no disclosure or suggestion anywhere in Downs that one or more modules are selected based on the type of streaming media content or DRM. Applicants submit that the metadata is not a module (rather data), and moreover, is not selected based on the type of streaming media content or DRM. In the Downs disclosure, references to streaming digital content is very minimal (almost none) and there is no disclosure at all of selecting one or more modules based on the type of streaming media content or DRM for inclusion in the digital container that is transmitted to the target device, as required by claims 1 and 71.

Furthermore, independent claim 58 recites in part:

> *selecting one or more modules for inclusion in the digital container based on one at least one of a type of streaming media content and the DRM...*

and,

> *accessing the secured streaming container (SSC) using the one or more modules to control playback of the streaming media content...*

Applicants submit that neither Downs, nor any other prior art of record, discloses or suggests these combinations of limitations.

Therefore, since neither Downs, nor any other prior art of record, discloses all the limitations as recited by independent claims 1, 58 and 71, Applicants submit that independent claims 1, 58 and 71 are distinguished over the prior art of record and are allowable. Moreover, since claims 2-17, 25-36, 59-87 and 95-106 depend from an allowable independent claim, Applicants submit that these dependent claims are also allowable for at least their dependency, and also for distinguishable subject matter recited by the dependent claims.

For example, the Examiner states on page 4 of the office action that the subject matter of claims 6, 63 and 76 is disclosed by Downs and cites col. 7, lines 11-40 and col. 82, lines 51-60 for support. However, a close examination clearly shows that these two passages do not disclose the subject matter of claims 6, 63, and 76. Rather, at col. 7, lines 11-40, Downs is discussing Licensing and Clearinghouse operations in a broad manner. The passage at col. 82, lines 51-60 is broadly discussing encryption and decryption of content in the player application. In both of these cited passages, there is no indication whatsoever of the required limitations of claims 6, 63 and 76. Claim 6 recites, in part (and similarly, claims 63 and 76):

> *selecting one or more modules based on the type of one or more media files and associated with the streaming media content, the one or more modules controlling the streaming of the one or more media files in the environment of the target device type.*

The encryption/decryption algorithms disclosed in this passage of Downs is not selected based on the type of media files. Further, these encryption/decryption algorithms are not included in the secure streaming container, and therefore do not meet the requirements of independent claims 1, 58 and 71, from which claims 6, 63 and 76 depend, respectively.

Also, as another example, in regards to dependent claims 7 and 77, the passage at col. 73, lines 17-28, as cited by the Examiner on page 4 of the office action, does not disclose the subject matter recited by these claims. For example, claims 7 and 77 recite, in part:

> *wherein the digital container graphic is either a static image and an animated image and is at least one of informational and promotional graphics that appears on a viewable electronic digital container cover before and after the digital container is opened.*

Applicants submit that the cited passage is referring to Metadata SCs selected on a website (see col. 73, line 15). As there are several types of SCs in Downs, Applicants submit that this SC in this passage is not the same as the digital container as recited by claims 7 and 77, and as explained above.

Also, as another example, the passages at col. 6, lines 45-48; col. 33, lines 63-67; and col. 82, lines 51-60, as cited by the Examiner on page 5 of the office action in regards to claims 13 and 83, do not support the assertion that Downs discloses the subject matter of claims 13 and 83. In fact, none of these passages provide any disclosure about an html file or image file being viewable during playing of the one or more streaming files, as required by claims 13 and 83.

In yet another example, in regards to claims 28 and 98 on page 6 of the office action, the cited passage at col. 33, lines 63-67 is referring to html displays when using a Transactional SC (see col. 33, line 20-24). Applicants submit that this is not the digital container as recited by claims 28 and 98, as there is no streaming digital content in a Transactional SC of Downs (rather a content URL), as explained previously.

Applicants submit that the §102(b) rejections should now be withdrawn.

Traversal of 103(a) Rejections

Claims 18-24 and 88-94 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Downs. This rejection is respectfully traversed.

Referring the Examiner now to MPEP § 2143, titled "**Basic Requirements for a *Prima Facie* case of Obviousness**", the MPEP mandates that:

> "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of

> success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claimed limitations. (Emphasis added)

Applicants submit that the prior art does not disclose or suggest all the claimed limitations.

First, Applicants submit that the dependent claims 18-24 and 88-94 depend from an allowable independent claim and therefore are also allowable for at least this reason. Furthermore, Applicants vehemently disagree with the Examiner's conclusory statement on page 9 of the office action, in regards to claims 18, 20, 88 and 90, that "the use of XML is notoriously known for exchanging information across the Internet and can be created manually or through automation." Applicants submit that these statements in this portion of the rejection are not appropriate for the claimed subject matter. Claims 18, 20, 88 and 90 are directed to unencrypted XML tag sets included in the secured streaming container to be used by search engines to discover the secured streaming container or the streaming media content. Applicants submit that it is not at all obvious to include unencrypted XML tag sets in the secured streaming container (i.e., having streaming content) and that this use of XML tags in a secured streaming container is certainly not obvious. Even Downs does not disclose or suggest this concept anywhere.

In contrast, the concepts disclosed by Downs are much different than from the claimed inventions. For example, in Downs, as disclosed at step 132 at col. 18, Electronic Data Stores must pull metadata from Metadata SCs to acquire promotional data from the Metadata SC to promote the Content 113 on a Web site. This potentially burdensome step is not necessary in the invention, as the unencrypted XML tag sets provide, in part, search and discovery ability of secure streaming containers or media content that may include encrypted media to search engines.

Using unencrypted XML tags for tagging encrypted streaming content is certainly not obvious. Moreover, Downs does not disclose or suggest anywhere placing XML tags in a secured streaming container. Therefore, it would not have been obvious to employ XML tags in Downs.

Because of these unique features, Applicants strongly disagree with the Examiner's official notice that the use of unencrypted XML tags to tag encrypted secure streaming containers is obvious. Just because XML is routinely known does not

necessarily give implicit rationale to apply XML techniques in any and all situations, unless one uses hindsight of the invention's disclosure to arrive at such a conclusion, which Applicants submit is impermissible. The use of XML tags as taught by the invention is not at all obvious.

Further, the Examiner's statement on page 9 of the office action that "Downs *et al* would have been able to accommodate the usage of XML documents since the main concern of Downs *et al* is for protecting secure documents against unauthorized usage" is inappropriate reasoning for use of XML, since XML has little to do, if at all, with protecting unauthorized usage. Further, Applicants submit that "protecting secure documents against unauthorized usage" is not necessarily Downs' main concern.

As to claims 21 and 91, the Examiner cites col. 61, bottom half, to support his contention that the subject matter of claims 21 and 91 are disclosed or suggested by Downs. However, this passage again is referring to a Metadata SC 620 which has no streaming media content, which is therefore not the same as the claimed invention.

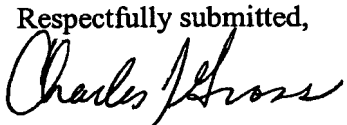
As to claims 22 and 92, on review of the cited passage (col. 59, lines 31-36), Applicants submit that this passage does not disclose or suggest "XML tags provide access rights to the target device," as recited by claims 22 and 92.

Applicants submit that the 103(a) rejections should now be withdrawn.

Conclusion

Prompt and favorable reconsideration is requested of the application. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written petition for extension of time if needed. Please charge any deficiencies and credit any overpayment of fees to Attorney's Deposit Account No. 23-1951.

Respectfully submitted,



Charles J. Gross
Reg. No. 52,972

October 24, 2005
McGuireWoods, LLP
1750 Tysons Blvd
McLean, VA 22102
(703) 712-5341

\\COM\546178.1